

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

February 17, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 26, 2004

Case Number: TSO-0135

This decision concerns the eligibility of XXX XXX XXX (hereinafter referred to as "the Individual") to obtain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be granted. For the reasons stated below, I find that the Individual's access authorization should not be granted.

I. BACKGROUND

The present case concerns an Individual who has been diagnosed with Substance Induced Mood Disorder and Substance Dependence, Alcohol with Physiological Dependence in Sustained Partial Remission. The Individual has agreed that these diagnoses are accurate. The only matter still at issue is the extent of the Individual's rehabilitation or reformation.

The events leading to this proceeding began when the Local Security Organization (LSO) received information indicating that the Individual had been arrested on two occasions for alcohol-related offences. A personnel security interview (PSI) of the Individual was conducted. During this PSI, the Individual indicated that his personality changes under the influence of alcohol and that he had been in an estimated 25 fights while drinking between 1994 and 1998. During the PSI, the Individual also admitted that he became intoxicated on a daily basis between 1994 and 1998. The Individual was then asked to submit to an examination by a DOE Psychiatrist. On April 25, 2003, a DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security case file. On May 8, 2003, the DOE Psychiatrist issued a report in which he stated that the

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

Individual met the criteria for Substance Induced Mood Disorder and for Substance Dependence, Alcohol, with Physiological Dependence in Sustained Partial Remission, as set forth in Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR). DOE Psychiatrist's Report of Examination at 29-30. The DOE Psychiatrist, noting that the Individual was still drinking and had never sought counseling or treatment for his substance related disorders, further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his substance related disorders.

An administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j) (Criterion J). The Notification Letter also alleges that the Individual has: "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h) (Criterion H).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA) who appointed me as Hearing Officer.

At the Hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented five witnesses: his wife, his sister, his supervisor, a friend and his Counselor (the Counselor). The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0135 (hereinafter cited as "Tr.").

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

The Individual does not dispute the DOE Psychiatrist's diagnoses of Alcohol Dependence and Substance Induced Mood Disorder. A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in deciding whether the individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, the only issue before me is whether the Individual has submitted sufficient evidence of rehabilitation or reformation to resolve the security concerns raised by his substance related disorders. After considering all of the evidence in the record, I find that he has not.

In his Report, the DOE Psychiatrist contended that, in order to establish *rehabilitation* from his substance related disorders, the Individual must:

Produce documented evidence of attendance at Alcoholics Anonymous for a minimum of 100 hours with a sponsor, at least once a week, for a minimum of one year and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of 1 year=1 years of sobriety.

Psychiatrist's Report at 31 (emphasis in the original). In his Report, the DOE Psychiatrist further contended that, in order to establish *reformation* from his substance related disorders, the Individual must either: "(1) [Complete] the rehabilitation program listed above, then 1 year of absolute sobriety, or (2) [Complete] 2 years of absolute sobriety." *Id.*

At the Hearing, the Individual very candidly and steadfastly recognized that he has alcohol related disorders and cannot afford to ever drink again. Tr. at 14-15. The Individual repeatedly testified that he had completely abstained from using alcohol for the past 22 months. Tr. at 10, 17, 27 and 69-70. Standing alone, the Individual's testimony (and that of his wife, sister and Counselor) provided a very strong case in support of his contention that the security concerns raised by his substance related disorders had been substantially mitigated.

However, the Individual presented one character witness, described as a close friend, who contradicted the Individual's testimony (and that of the Individual's wife and sister) that he had not used alcohol since February 2003. That witness ("the Friend") testified that he had witnessed the Individual drinking a beer about two months prior to the Hearing. Tr. at 60-61, 63-64. The Friend further testified that he observed the Individual consuming a beer sometime in November or December of 2003. Tr. at 65. The Friend seemed to have a very specific recollection of the Individual's recent beer drinking episode. According to the Friend, the Individual came over to watch an Oakland Raiders football game one Sunday morning and consumed one Bud Light. Tr. at 64. Interestingly, after the Hearing, the Individual submitted a letter and a sworn affidavit in which

the Friend recanted his testimony and attributed it to medication he was allegedly taking for “a double ear infection, sinus infection, kidney infection and back spasms.” December 17, 2004 Letter from the Friend to the Individual’s Counsel. Unfortunately for the Individual, I find the Friend’s testimony at the Hearing to be more credible than the letter and affidavit.²

If it were not for the Friend’s testimony, I would have concluded that the Individual had provided sufficient evidence of reformation to resolve the security concerns raised by the DOE Psychiatrist’s diagnoses.³ The Individual’s contention that he has mitigated the security concerns raised by his alcohol-related disorders is based largely upon his assertion that he had completely abstained from drinking for the past 22 months. The Regulations that govern DOE access authorizations require that “any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” 10 C.F.R. § 710.7(a). Consequently, if there is any reasonable doubt that this assertion is accurate, I cannot conclude that the Individual has mitigated the security concerns under Criteria J and H. The Friend’s testimony, given by a witness close to the Individual himself, raises reasonable doubt about the Individual’s assertion.

After carefully considering all the evidence in the Record including the testimony provided at the Hearing, I am not convinced that there is sufficient evidence of rehabilitation or reformation to resolve the security concerns raised by the Individual’s substance related disorders.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria J and H. Therefore, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual’s access authorization should not be granted at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: February 17, 2005

² The testimony of the Individual’s wife also contradicted that of the Friend. The Friend testified that he had observed the Individual sharing a beer with the Individual’s wife. Tr. at 66. The Individual’s wife specifically denied sharing a beer with the Individual in the Friend’s presence. Tr. at 137-39.

³ The DOE Psychiatrist’s testimony at the Hearing indicates that he reached a similar conclusion. Tr. at 155-57.